U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12589191

Date: JUNE 16, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a chemist, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree; she holds a Ph.D. in organic chemistry from [redacted]. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner began studying in the United States in 2008. After earning a doctorate in organic chemistry from [redacted] in 2017, she began a postdoctoral fellowship at [redacted] a pharmaceutical company in [redacted] Illinois. When she filed the petition in July 2019, the Petitioner stated that she would soon begin a one-year postdoctoral fellowship at [redacted] University [redacted]. In February 2021, the Petitioner submitted a change of address notice indicating that she has moved to [redacted] California. The record does not specify her current employment.

The Petitioner describes her work and her proposed endeavor as follows:

> [M]y research has particularly focused on designing new protocols in the synthesis of pharmaceutically relevant targets and in the development of new technology for [redacted] in the pharmaceutical and chemical industry. . . .
>
> . . . I plan to extend my research in [redacted] chemistry, aiming at using automation to drive the research efficiently in the early drug discovery by reducing time and tediousness for medicinal chemists. In parallel, I am interested to dive more into targeting techniques for protein degradation to develop therapeutics for [redacted] There is a continuous need to identify the optimal [redacted] to induce a sustained degradation and strong inhibition of downstream signals and display improved selectivity in order to reduce [redacted]

The Petitioner's doctoral studies at [redacted] yielded four published scholarly articles. Her mentor at [redacted] states that the Petitioner "has undertaken multiple projects that have been fundamental to advancement of [redacted] and [redacted] as important [redacted] building blocks in the field of organic chemistry." Various letters in the record describe, in technical detail, how the Petitioner's published work from 2014 to 2017 relates to the drug [redacted] process.

The postdoctoral program manager at [redacted] states:

> As a Postdoctoral Fellow, [the Petitioner] is responsible for design of [redacted] candidates, production of the [redacted] and, [*sic*] development of new

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[redacted] technologies in early drug [redacted] She has identified versatile approaches to dispense [redacted] amounts of chemical solids for [redacted] In addition, she is currently investigating the use of [redacted] to improve the efficiency of [redacted] chemical reactions.

The Petitioner submits a job offer letter for a one-year appointment at [redacted] University's [redacted] The Petitioner did not specify how she intended to continue pursuing research into [redacted] s beyond this one-year period (which elapsed on July 31, 2020, while the appeal was pending).

The Director concluded, without further comment, that the Petitioner satisfied the first two *Dhanasar* prongs. Because the Petitioner must meet all three prongs under *Dhanasar*, we need not further explore the first two prongs unless the Petitioner overcomes the Director's determination regarding the third prong. For the reasons discussed below, we conclude that the Petitioner has not overcome that determination.

As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

In the denial notice, the Director stated that the Petitioner did not establish that it would be impractical for to secure a job offer or to obtain a labor certification, and that she did not establish sufficient urgency to warrant a waiver of the labor certification process. The Director also questioned the probative value of information regarding the citation of the Petitioner's published work. Below, we will address the Petitioner's responses to each of these determinations.

A. Impracticality of Job Offer and Labor Certification

The Petitioner states that labor certification is impractical because her postdoctoral appointment at [redacted] is "inherently temporary" and "narrowly tailored to her particular skillset."

There is no dispute that the Petitioner's postdoctoral position at [redacted] is temporary. The appointment letter from [redacted] University describes a one-year term (ending July 31, 2020), and makes no mention of renewal. With or without a waiver, the Petitioner could not remain in that position. Also, she did not need the waiver to complete the fellowship; she already held the necessary authorization to work in that position throughout its fixed, finite duration. This proceeding is not about the fellowship, but about the *permanent* immigration benefit that the Petitioner seeks, which would continue after she completes the temporary fellowship.

By focusing her appellate arguments on the [redacted] fellowship, the Petitioner neglects the very relevant question of why a labor certification would be impractical for her *subsequent* employment.

B. Sufficient Urgency

The Petitioner asserts that "there is considerable national urgency in [her] research" because "the United States [is] no longer at the forefront of drug manufacturing." The Petitioner states that the United States relies on foreign sources for 72% of its [redacted] and

that authorities do not know "how quickly the United States' [redacted] manufacturing facilities could increase production in order to meet the demand if China and India were suddenly unable to supply the U.S. market." The Petitioner asserts that her "research is clearly central to [the] initiative" to increase domestic production of [redacted] and end-product drugs. Setting aside the question of whether speculation about hypothetical supply chain interruptions demonstrates "considerable national urgency" as claimed, the above arguments do not bear directly on the Petitioner's work.

The Petitioner's research relates to the *development* stage, rather than techniques to *manufacture* industrial quantities of [redacted] or drugs. The Petitioner's own initial description of her research includes no claims about its impact on manufacturing and the industrial supply chain. Letters submitted with the petition indicate that her work is applicable to "drug discovery experimentation" and techniques "used by pharmaceutical and biotech laboratories when designing new [redacted]." Where the letters talk about "production," it is in the context of producing materials for use by "researchers" rather than for commercial manufacture.

Furthermore, the Petitioner's most-cited articles were published five years before the petition's filing date. The Petitioner contends that her research has therefore permeated throughout the field. Nevertheless, the Petitioner has not submitted evidence to show that her work has led to a documented increase or acceleration in the production of [redacted] over the course of those years.

Because the Petitioner's arguments on appeal emphasize the manufacture of existing drugs rather than the discovery of new drugs, those arguments do not establish that the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process.

C. Benefit From the Petitioner's Contributions

The Petitioner states that "the benefits stemming from her research are so significant that it would still be beneficial to waive the labor certification [requirement] even if other qualified domestic workers were available," because "[s]he holds an advanced degree in a field directly related to her proposed endeavor"; "possesses considerable knowledge, expertise, and skills in a highly specialized field"; and is "one of the leading researchers in her field."

With regard to the Petitioner's "advanced degree" and "considerable knowledge, expertise, and skills," the underlying immigrant classification includes statutory requirements for either an advanced degree or exceptional ability (defined as "a degree of expertise significantly above that ordinarily encountered" in a given field[3]). The same statute also generally requires a job offer with labor certification for individuals with those qualifications. As such, the Petitioner's advanced degree and expertise are not presumptive evidence of eligibility for a national interest waiver.

There remains the assertion that the Petitioner is "one of the leading researchers in her field." Before turning to statistics that the Petitioner cites in support of this claim, we note the Petitioner's submission of information from the National Postdoctoral Association, defining a postdoctoral scholar as "an individual holding a doctoral degree who is engaged in a temporary period of mentored research and/or scholarly training for the purpose of acquiring the professional skills needed to pursue a career path of

[3] *See* 8 C.F.R. § 204.5(k)(2).

his or her choosing." This information supports the conclusion that, at the time of filing, the Petitioner remained a trainee, still "acquiring the professional skills" that her field demands.

The Petitioner notes, on appeal, that the classification she seeks does not require her to be at the top of her field. We agree; however, she has claimed to be "one of the leading researchers in her field," and she bears the burden of proof regarding such claims.

The Petitioner bases this claim primarily on citation data for her published work. The Petitioner initially stated that her "work has resulted in 4 peer-reviewed journal articles," which "have been cited a total of 130 times," ranking them "among the most-cited in the field." Specifically, three of her articles, two published in 2014 and one in 2016, ranked "amongst the top 10.0% most-cited papers published in the field" during their respective years. It is significant that the article from 2016 is a review article, in which the Petitioner and her collaborators compiled and described existing research by others, rather than an article that reported her own original research findings.

A table published by Clarivate Analytics in 2019 shows that, for papers published in the field of "Pharmacology & Toxicology," the lower boundary for the top 10% was 28 citations for articles published in 2014, and 15 citations for articles published in 2016. The record at the time of the decision did not support the Petitioner's assertion that her articles appeared in journals that Clarivate classifies under "Pharmacology."

In the denial notice, the Director stated that the imprecision of the Clarivate data diminished its evidentiary weight. On appeal, the Petitioner states: "the Essential Science Indicators Journal Category Scope Notes clearly indicate that pharmacology covers [the Petitioner's] research." The Petitioner did not submit these notes prior to the denial of the petition, but does so on appeal, noting that they state that "Pharmacology covers journals dealing with . . . [redacted] chemistry." Those same notes state: "The Chemistry category covers . . . organic chemistry . . . laboratory syntheses, and isolation and analysis of clinically significant [redacted] . . . Miscellaneous and applied chemistry journals also map here." In this respect, it is significant that the Petitioner's 2014-2017 articles all appeared in journals with the word "Chemistry" (or the German "*Chemie*") in their titles. The Petitioner's response to a request for evidence (RFE) includes tables from Google Scholar, listing the journals under "Organic Chemistry" and "Chemistry & Material Sciences" rather than under "Pharmacology."

The Petitioner's RFE response also includes a "Microsoft Academic field model," showing the Petitioner in the top 2.15% of "In-Field Author Citation Impact for Publications between 2014-2020." In the denial notice, the Director stated that this model "is self-made and thus has no probative value." The Petitioner argues on appeal that, while she provided the initial data, the resulting graph was not "self-made."

The record shows that the model incorporated citation data for over 800,000 articles published in four "Areas of Research," specifically "Organic chemistry, drug discovery, drug development, [and] automation." The Petitioner has not established that her research relates closely to all four named areas of research. The inclusion of unrelated areas may skew the resulting percentile rankings. We note that the Microsoft Academic chart shows the median citation figure (50th percentile) as one

citation; the previously submitted Clarivate Analytics figures for "Pharmacology & Toxicology" set the median at six citations. Such conflicts diminish the evidentiary weight of the citation materials.

Given the above discussion, we conclude that, while the Petitioner has documented a number of citations for work published while she was a doctoral student, the citation metrics she provided are deficient in some respects, and of questionable relevance in others. The disparate medians between the Google Scholar and Microsoft Academic indicate that the percentiles that the Petitioner has submitted are the product of result-oriented calculation rather than a wholly objective comparison of the field's response to her work to that of others performing truly similar research.

The Director observed that when the Petitioner filed the petition in July 2019, her most recent published work dated from her doctoral studies in 2017. On appeal, the Petitioner notes that her postdoctoral work at [redacted] (which began after the filing date) produced new articles. She does not show that her work at [redacted] yielded any publications; [redacted] is a commercial, rather than academic, institution. The fluctuations in the Petitioner's output demonstrate that her production of published work is contingent on the nature of her employment and her employer. In her description of her proposed endeavor, the Petitioner has not specified whether her intended employment after her fellowship at [redacted] would be industrial or academic. The Petitioner has relied largely on her publication history to show the benefit of her work. She does not explain how that benefit would continue in a position that did not involve such publication.

As explained above, the Petitioner has not shown that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

III. CONCLUSION

Because the Petitioner has not satisfied the required third prong of the *Dhanasar* analytical framework, we conclude that she has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.